

DISCUSSION AGENDA ITEM

Wednesday, July 26th 2017

Item: Ocean Avenue Encroachments and Right of Way Recovery

Summary:

On March 8, 2017, a Consent Agenda Staff Report described the issue of encroachments into the City right of way at 407 and 357 Ocean Avenue. These encroachments either eliminate parking in the right of way altogether, or create a situation where cars that park adjacent to them are partially blocking what should be the cleared roadway. The Council approved the staff proposal to move forward with further conversations with the property owners, to get cost estimates for recovering the Ocean Avenue right of way and to come back to Council for cost approval.

A scope of work to recover the City right of way and create parking consistent with the other properties on the street at both locations has been developed and offered for bid. The low Bid for both projects combined was \$8,400. The project purpose is to provide parking in front of both properties without encroaching on the road width needed for safe two-way traffic. The project also provides consistency between these properties and their neighbors up and down the street.

On June 28th staff recommended approving the low bid and going forward with the project. The Council discussed the issue and directed staff to discuss further with the City Attorney, City Engineer, and with the residents and owners, and return to Council.

General Right of Way Policy Discussion–

Where the full street right of way is not developed with roadway, curbs, sidewalks, or other public improvements, it is not unusual that the adjoining property owners will, over time, end up with vegetation, grass, hedges, or other encroachments over some portion of the ‘unused’ right of way. The City effectively ‘owns’ the full right of way on behalf of the City, and has the right to reclaim and use it as needed for the benefit of the public, for instance to widen a street, provide public parking, address a safety issue, or support other public infrastructure.

Where an adjacent neighbor desires to construct or place anything within the City’s right of way, they are required to utilize the Encroachment Permit process to do so. This allows the City to review and consider whether allowing a particular use in the right of way is in the public interest, as outlined in detail in City Code section 12.04. For instance, the City recently approved an Encroachment Permit for a retaining wall in the City right of way at 321 Trinity St. The wall is in line with the sidewalk edge on the two adjoining properties, parking and street width are deemed fully adequate, and importantly the Permit explicitly requires the adjoining owner to remove all improvements at the City’s request in the future.

There are many unpermitted (and some permitted) encroachments into the City right of way throughout Trinidad. Staff see no need to systematically address existing encroachments simply on principle, and indeed do not have the time nor resources to do so. However any new encroachment should absolutely be required to utilize the encroachment permit process, and staff

will make all efforts to prevent new unpermitted encroachments from occurring. For existing encroachments, staff believe the right of way should be reclaimed where it is necessary for public safety, to implement specific public works projects, or for other public benefit. This brings us to the two encroachments under discussion today.

At 407 Ocean

In this case the encroachment creates a situation where cars parked in front of it are blocking the flow of traffic and creating an unsafe condition. One option would be to paint the curb red and not allow parking, but parking is in short supply on Ocean St. Staff recommend the encroachment be removed to allow safe parking in front of this residence, and a consistent 'right of way' line along the street. The (new) owner understands the City's plan (as described on the attached Scope of Work) and does not object. The encroachment into the right of way was constructed decades ago, by a previous owner. The City Attorney does not recommend attempting to hold the current owner financially liable for the work due to their complete lack of involvement in the creation of this encroachment.

At 357 Ocean Ave

An Escalonia hedge was planted in the City right of way, and has subsequently grown to massive proportions, engulfing the entire 8' unpaved right of way, pushing beyond that into the paved roadway, and covering the City water meter such that our staff have to crawl deep into the hedge to read the meter, which puts them in a dangerous situation relative to passing cars.

Staff have so far been unable to contact the owner of the property. The City has a name, but the water billing and County assessor data provide a local PO Box that staff understand is used by the current resident. The current resident has refused staff's requests to provide a number or address for the owner.

Staff's recommendation is to notify the owner that the City is requiring the hedge to be removed from the full right of way, and that the owner can either complete that effort themselves, or reimburse the City for the cost. While we have not reached the owner, and very much want to do so, certified mail to the address on record for the parcel should be adequate legal notice. If there is no response, the City may have to fall back on completing the work, billing the owner, and pursuing a lien against the property if necessary to recover our costs.

The City Attorney's advice includes the following points:

1. The City certainly has the right to reclaim the entire right of way if it desires– it is City property.
2. Because the hedge was planted by the current owner (or their tenant), the City has a reasonable claim to demand that the owner remove the hedge, or reimburse the City for doing so. If there was objection, this could be pursued through a nuisance abatement process, or through a small claims court process. The latter would be less expensive and involved.
3. Either approach (nuisance abatement or small claims) will require proper noticing of the owner.

4. Depending on the scale of the costs involved, it may be more efficient to have the City pay for the work, or to negotiate a shared cost arrangement. i.e. we may spend more in time and money than we get back.

The current resident has done substantial trimming of the hedge, and strongly objects to staff's recommendation for its complete removal. The City considered the removal of this hedge in 2014 as part of the Stormwater Project construction, and decided against it at that time. However that decision is largely irrelevant to the current discussion in staff's opinion.

The other option at 357 Ocean is to hold off on complete removal of the hedge, and instead require it be trimmed enough to allow safe access to the water meter, and safe passage and visibility for the paved roadway. This would not provide any parking, and would present the same ongoing challenge as at 407 Ocean, where people parking adjacent to the (trimmed) hedge would be partially obstructing the safe flow of traffic on the street.

Financial Impact:

Removal of both encroachments and creation of graveled parking in both locations as provided on the attached scope of work was bid at \$8,400. Staff expect the costs to be roughly even between the two, and can work with the contractor to split the bid cost between the two parcels in order to recover the costs at 357 Ocean from the homeowner.

This project is not included in the 2018 Public Works Budget. There are substantial funds in the Capital Asset and Special Projects reserve to support this safety project.

Staff recommendation

- *Approve the use of up to \$8,400 from the Capital Asset and Special Project Reserve Fund for the Ocean Ave Right of Way Recovery Project.*
- *Direct staff to complete the necessary legal notifications to the address on file for the owner of 357 Ocean so that they can either do the work themselves, or the City can recover our costs for the project from them if they do not.*
- *Once those notifications are complete, accept the low bid and move forward to implement the project.*

Alternate minimum option for public safety (not staff's recommendation):

If the Council does not want to expend these funds at this time, or have other objections to the project, staff would recommend at a minimum that the Council direct staff to paint the curb red at 407 Ocean, and paint a red stripe on the edge of pavement adjacent to the hedge, so that people will not create a safety hazard by parking in these locations, and can be ticketed if they do.

Attachment:

- Ocean Avenue Scope of Work

City of Trinidad Ocean Avenue Right of Way Recovery Project

Scope of Work

At 407 Ocean Ave in front of property:

- Contractor to locate utilities
- Remove A/C curb
- Shrubs to be trimmed to 1 foot from right of way on city side
- Excavate 6 inches below road grade to 1 foot from edge of city side of right of way and compact exposed subgrade
- Install 4 x 4 (minimum size) pressure treated lumber rebar pinned retaining wall to lawn grade
- Backfill with open graded crushed base rock to road grade and compact
- Meter box to be re-installed to road grade

At 364 Ocean in front of property

- Contractor to locate utilities
- Remove hedge on City side to edge of right of way
- Excavate to 6 inches below road grade and compact exposed subgrade
- Backfill with open graded crushed base rock to road grade and compact
- Meter box to be re-installed to road grade